IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6741 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SAIYED AHMED BHENSA-BROTHER OF DETENUE IQBAL AHMED BHENSA

Versus

DISTRCIT MAGISTRATE, NAVSARI

Appearance:

MR NM KAPADIA for Petitioner

MR MA BUKHARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/04/99

ORAL JUDGEMENT

1. This is a petition at the instance of the brother of the detenue challenging the order of detention passed by the respondent-authority under section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985.

2. I have heard the learned counsel for the respective parties, and have also with the assistance of the learned counsel perused original documents pertaining

to the case. I may clarify here that when I say I have perused the original documents, I mean the original documents which are originals in the hands of the detaining authority, which have been considered and/or taken into consideration by the detaining authority and on which the detaining authority has applied its mind. I also mean that I have considered the original documents which are originals in the hands of the detenue, which in reality are the copies supplied to the detenue by the detaining authority, being copies of those originals which have been referred to and relied upon by the detaining authority.

3. The petition has raised a number of contentions both factual and legal in the memo of the petition. I am however inclined to concentrate only upon the main ground upon which the challenge to the order of detention is pressed.

4. Learned counsel for the petitioner has emphatically urged that the documents supplied to the detenue along with the order and grounds of detention, which are original documents in the hands of the detenue are poorly legible so far as most of the documents are concerned, certain specific pages are not completely legible, only partly legible and partly illegible and/or mostly illegible. In this context, the reference is made to pages 51, 52, 53, 193 and 194.

5. In the context of these contentions, I have examined both sets of these 5 pages. By both sets I mean the set supplied to the detenue by the detaining authority, as also the original set on the record of the detaining authority, which has been referred to and relied upon by the detaining authority for the purpose of arriving at a subjective satisfaction as to the detenue.

6. Having examined for myself the bulk of the documents and specifically these 5 pages referred to hereinabove, I find that at the very least, these specific 5 pages in both the sets are mostly illegible.

7. This raises two clear issues and the necessary conclusions to be drawn therefrom i.e. (i) If the documents supplied by the detaining authority to the detenue together with the grounds of detention are illegible, as in fact I have found them to be, the same adversely affect the right of the detenue to make an effective representation. For that reason, the order of detention is liable to be quashed and set aside.

8. However, the same set of facts also permits another conclusion to be drawn and that is that if the documents which the detaining authority itself referred to and relied upon and took into consideration are themselves mostly illegible, and if such illegible documents have been taken into consideration by application of mind and as a result of such exercise, the detaining authority has arrived at a subjective satisfaction as to the fitness of the detenue to be detained under the provisions of the said Act, it can be said that the very process of application of mind is so faulty as to vitiate the subjective satisfaction achieved by the detaining authority. This is another ground for holding that the impugned order of detention cannot be sustained.

9. On these two grounds and without going into other aspects of the matter, I find that the impugned order passed by the detaining authority is not sustainable and is therefore quashed and set aside. The detenue is directed to be released forthwith unless otherwise required. Rule is made absolute with no order as to costs. Direct service permitted.

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